

**MINUTES OF COMMISSION MEETING**  
**October 12, 2000**

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey were Commissioners Albert Burstein, Hugo Pfaltz, Jr., Peter Buchsbaum and Vito Gagliardi, Jr. Grace Bertone and Professor William Garland attended on behalf of Commissioners Rayman Solomon and Patrick Hobbs, respectively.

Also attending were: Norma Blake and Pat Tumulty, New Jersey Library Association; Kris Ann Cappelluti, Riker, Danzig; Maureen Davin, Verizon; Carol Jacobson, New Jersey Attorney General's Office, Division of Law; and Charles Centinaro, Office of Governor's Counsel.

Minutes

The Commission approved the Minutes of the September 14, 2000 meeting as submitted.

UCITA

Staff reviewed the issues presented in the October memorandum on UCITA. On the issue of mass-market transactions, staff was requested to prepare a memorandum for the next meeting analyzing the provisions of UCITA which apply the UCITA definition of the term. Further discussion of UCITA was deferred to the November meeting, in order to allow the staff to prepare a response to the materials received on the day of the meeting from Carlyle Ring and Raymond Nimmer.

UCC Article 9-314 - Structured Settlements

Mr. Burke presented an overview of the positions raised at the last meeting by various interested parties and stated that after considering those positions, he believed that the NSSTA and NASP Model Act with appropriate amendment provided the best solution to the problem of structured settlements. That model act required the factor to bring a court action seeking permission to purchase the stream of payments under the structured settlement contract from the beneficiary of the contract. That act required professional representation for the beneficiary and disclosure of material information regarding the cost of the sale. Mr. Burke proposed amending the "best interest" standard contained in the act and replacing it with a standard of "voluntary, intelligent and knowing" decision-making.

The Commission agreed generally with the approach. However, the Commission asked Mr. Burke to reduce the number of definitions contained in the definition section. Many definitions were deemed unnecessary. Commissioner Pfaltz believed in particular that the definition of structured settlement itself should be eliminated, as it would raise judicial questions. In his view, the main purpose of statutes governing structured settlements was to limit the squandering of lump sum payments.

Professor Garland disliked the definition of the term "payee" since it was a common term defined in an uncommon way. In addition, if a term is used only in one section, then it should be defined in that section alone.

Mr. Burke clarified that the standard did not require the court to find that the transaction was in the best interests of the beneficiary; the court only had to find that the beneficiary was acting voluntarily and knowingly.

Mr. Burke explained that many of the sixteen statutes already enacted by other states contain similar definition sections but stated that he would sift through the definition section and retain only those essential to the statute. Uniformity is not required for this project.

Commissioner Pfaltz raised the questions of what jurisdiction's law applies. The jurisdiction provision is found in subsection (p) of the definition section. The Commission directed staff to take it out of the definition section and place it in a stand-alone section. The Commission also directed staff to review the issues of jurisdiction, venue and choice of law. The model act should apply any time the payee is a New Jersey resident. The Commission decided that it was best to leave out choice of forum and choice of law provisions and let the court deal with those areas.

### Legalized Games of Chance

Judith Ungar discussed the Commissioners' requested change in Section 2-3(a) regarding when municipal agents may enter a gaming establishment to enforce the law. The revised section requires them to get a warrant before entering the premises where equipment for the games' operation is kept for use. Commissioner Garland proposed that staff add the words "judicially issued" before "warrant."

Section 1-1 contains a new definition of "amusement game." Included in the definition are all the elements used in the existing statute. Ms. Ungar affirmed that the language in Section 1-1(4) is part of the existing statute. Commissioner Gagliardi remarked that there are games of chance that do not fall within the four-part definition. For example, "scratch and win" games do not satisfy all requirements. If something is not an amusement game, it is not made legal by the chapter on games of chance. Gambling games not specifically made legal are illegal.

Commissioner Gagliardi raised a question about prizes in Section 5-9(a) which states that all amusement game prizes shall be merchandise. Some prizes consist of allowing the winner to play the game again. Mr. Cannel was not sure whether a replay constituted a prize. Staff will research the issue.

Professor Garland referred to Section 1-1 which requires the use of cards in bingo, noting that some bingo is now played electronically without cards. Ms. Garde stated that under UETA, "cards" includes the electronic equivalent of cards. Thus no amendment is needed.

Commissioner Burstein noted an inconsistency in terminology between Section 5-1 ("Amusement games") and Section 5-2 ("Amusement Game.") Staff will correct that inconsistency.

Section 5-4 deals with certification of amusement games. If a game is certified as permissible, it may be held and operated in the State by a person who obtains a license to operate it. Subsection ( c ) provides for application for certification of a game which is not on that certified list. The implication is that any uncertified game for which a prize is paid, is illegal.

The Commission discussed the anomalies of the law and discussed whether activities such as tennis tournaments might be illegal. Mr. Cannel stated that there is an entire class of other activities that might require legalization under an additional chapter. Any change in the gambling law requires approval by referendum and amendment of the New Jersey Constitution.

Commissioner Burstein questioned why New Jersey needs an elaborate statute on games of amusement in view of the fact that the State has casino, horse-racing and other legalized gambling. Mr. Cannel stated that, under the New Jersey Constitution, any activity construed as gambling, that is not excepted by statute, is unlawful. Many common amusement games, such as those in

children's amusement centers, and perhaps tennis tournaments, seem to be technically illegal.

In the provisions concerning licensing qualifications, the Commission asked staff to use the term "any business entity" rather than the list of corporate forms. Section 3-9( c)(2) specifies 10% ownership while other provisions require only 5% ownership. The Commission decided all instances should be 10%.

Section 4-13 on violations requires the Legalized Games of Chance Commission to give warning for violation prior to imposing sanctions. That is deliberate because most non-professionals confronting this complicated law will make mistakes and be in violation of the law. The Legislature adopted this approach in 1998.

Mr. Cannel stated that he wanted to review the question of what constitutes gambling in New Jersey to clarify for the Commission any additional areas of concern. Many organizations unwittingly violate the law on gambling because the activity in question is perceived as commonplace and law abiding.

#### Status of Children

Mr. Cannel suggested that the Commission not recommend any change in statutes in this area. The reported opinion in In re Estate of Kolacy, 332 N.J. Super. 593 (Ch. Div. 2000) handled the narrow issue in the case very well. In general, the existing statutes indicate that a child born within nine months is treated as the child of the decedent. There is no rule where the child is born later, and the approach of Kolacy deals with that problem adequately. Statutory solutions may raise other problems. Commissioner Pfaltz mentioned the problem of closing an estate due to children born after the death of the decedent. In the reported opinion, the children were born two years after the death of the decedent. At some point, the claim of these children to the estate must be cut off. The Commission agreed that a date line is arbitrary but that there must be a cut-off point.

The project was abandoned by the Commission.

#### Disability Act

The Commission asked Ms. Garde to prepare material for their review for one of the next two meetings.

### Notarial Acts

Ms. Garde explained that Section 11 of UETA provides for electronic versions of documents. In situations where execution of an electronic document requires notarization, the presumption is that the notary is sitting next to you and that the notary types the necessary information into the electronic document.

However, some individuals read the section in another way, hypothesizing that the notary and the person executing the document may be in different physical places. Ms. Garde stated that UETA was not intended to achieve this result but that it was being misread that way. In New Jersey, a notary must be physically present to notarize a document. The personal presence requirement is a case law requirement not a statutory one. Ms. Garde suggested that there is room in the statutes to clarify this requirement of physical presence to avoid any possible misinterpretation of UETA.

In a related area, Ms. Garde noted that the trend was to disfavor use of notarial acts and rely instead on certifications. Under federal law one can execute a deed electronically, but there is no way under federal law to record it. Chairman Burstein asked staff to continue working on the project.

### Miscellaneous

The Commission asked staff to arrange meeting materials in agenda order. The next meeting is scheduled for November 16, 2000.